K Sivapragasam a/l Krishnar v Renominium Development Sdn Bhd & Ors

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO N-01-31 OF 1996
SHAIK DAUD, ABDUL MALEK AHMAD AND MOKHTAR SIDIN JJCA
18 SEPTEMBER 1998

Land Law *— Sale of land — Caveat — Application for removal — First respondent bought land from second respondent — Appellant entered caveat on ground that sale was not approved by executive council of second respondent — Sale price below market value — Appellant member of executive council — Whether appellant had locus standi to enter caveat*

Land Law *— Sale of land — Validity of agreement — Decision to sell land made by executive council — No declaration that meeting was illegal — Whether decision to sell land stands — Whether transaction formalized*

The first respondent bought a piece of land ('the land') from the second respondent ('the union') at the price of RM950,000. Form 14A of the National Land Code 1965 had been duly executed by the trustees of the union. The appellant later entered a caveat to stop the transfer of the land from the union to the first respondent, on the ground that the sale of the land was not approved by the executive council of the union and the sale price was below the market value. The first respondent then took out an originating summons against the appellant, the second and third respondents to remove the caveat. The first respondent prayed that the third respondent cancelled and removed the private caveat and the land be registered in the name of the first respondent. The first respondent also prayed that the appellant or his agents be prohibited from entering anymore caveats in respect of the land and that the third respondent be directed not to register anymore caveats by the appellant or his agents. The judge in the court below allowed the application by the first respondent and ordered the caveat be removed. The appellant appealed against the order for removal.

Held, dismissing the appeal:

(1) Under the Trade Unions Act 1959, the land was vested with the trustees and only the trustees could deal with them. Therefore, only the trustees had interest on the land. The union and its members' entitlement was only to the use and benefit of the land. They have no caveatable interest on the land. As such, the appellant as an ordinary member or a member of the executive council of the union was never given the mandate to enter the caveat. He had no interest whatsoever on the property and had no locus standi to enter that caveat (see pp 546E–F and 548I); *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770 distinguished.

(2) The decision to sell the land was decided by the executive council. It may be improperly constituted but to an outsider that was the decision of the executive council. The minutes of that meeting had not been expunged and neither was there any declaration that the meeting was illegal. Therefore, the decision to sell the land stood. It was upon this decision that the trustees executed the sale and purchase agreement and Form 14A. Further, once the trustees on whom the land had been vested executed the sale and purchase agreement and Form 14A, the transaction was formalized. It did not matter whether there was any decision by the executive council or not (see pp 550I and 551A–B); *Hew Sook Ying v Hiw Tin Hee* [1992] 2 MLJ 189 followed.

[Bahasa Malaysia summary

Penentang pertama telah membeli sebidang tanah ('tanah tersebut') daripada penentang kedua ('kesatuan tersebut') dengan harga RM950,000. Borang 14A Kanun Tanah Negara 1965 telah dilaksanakan oleh pemegang amanah kesatuan tersebut. Perayu kemudiannya memasukkan kaveat untuk menghalang pindahmilik tanah tersebut daripada kesatuan tersebut kepada penentang pertama, atas alasan bahawa jualan tanah tersebut tidak diluluskan oleh majlis eksekutif kesatuan tersebut dan dan harga jualan adalah kurang daripada harga pasaran. Penentang pertama kemudiannya mengambil saman pemula terhadap perayu, penentang-penentang kedua dan ketiga untuk membatalkan kaveat itu. Penentang pertama memohon supaya penentang ketiga memotong dan membatalkan kaveat persendirian dan tanah tersebut didaftarkan atas nama penentang pertama. Penentang pertama juga memohon agar perayu atau ejen-ejennya dilarang memasukkan apa-apa lagi kaveat berhubung dengan tanah tersebut dan bahawa penentang ketiga diarahkan supaya tidak mendaftarkan apa-apa lagi kaveat oleh perayu atau ejen-ejennya. Hakim di mahkamah bawah membenarkan permohonan oleh penentang pertama dan memerintahkan kaveat dibatalkan. Perayu membuat rayuan terhadap perintah pembatalan.

Diputuskan, menolak rayuan:

(1) Di bawah Akta Kesatuan Sekerja 1959, tanah tersebut diletakhak dalam pemegang amanah dan hanya pemegang amanah sahaja yang boleh menguruskannya. Maka, hanya pemegang amanah mempunyai kepentingan dalam tanah tersebut. Kesatuan tersebut dan hak ahli-ahli terhad kepada penggunaan dan manfaat tanah tersebut. Mereka tidak mempunyai kepentingan boleh kaveat atas tanah tersebut. Oleh yang demikian, perayu sebagai seorang ahli biasa atau seorang ahli majlis eksekutif kesatuan tersebut tidak pernah diberikan mandat untuk memasukkan kaveat tersebut. Ia tidak mempunyai apa-apa kepentingan atas hartanah tersebut dan tidak mempunyai locus standi untuk memasukkan kaveat itu (lihat ms 546E–F dan 548I); *Aik Ming (M) Sdn Bhd*

& Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770 dibeza.

(2) Keputusan untuk menjual tanah tersebut telah diambil oleh majlis eksekutif. Ia mungkin telah dibentuk dengan tidak wajarnya tetapi kepada orang luar ia merupakan keputusan majlis eksekutif. Minit-minit mesyuarat itu telah tidak dipadamkan dan tidak juga terdapat apa-apa perisytiharan bahawa mesyuarat itu menyalahi undang-undang. Oleh yang demikian, keputusan untuk menjual tanah tersebut masih kekal. Berdasarkan keputusan inilah pemegang amanah melaksanakan perjanjian jual beli dan Borang 14A. Seterusnya, sebaik sahaja pemegang amanah pada siapa tanah tersebut telah diletakhak, melaksanakan perjanjian jual beli dan Borang 14A, transakasi telah pun dirasmikan. Adalah tidak penting sama ada atau tidak terdapat apa-apa keputusan oleh majlis eksekutif (lihat ms 550I dan 551A–B); *Hew Sook Ying v Hiw Tin Hee* [1992] 2 MLJ 189 diikut.]

Notes

For cases on caveat, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2498–2507.

For cases on validity of agreement, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 2811–2815.

Cases referred to

Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal [1995] 2 MLJ 770 (distd)

Citibank NA v Kwok Chee Loong [1988] 2 CLJ 758 (refd)

Hew Sook Ying v Hiw Tin Hee [1992] 2 MLJ 189 (folld)

Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors [1998] 1 MLJ 465 (refd)

Taff Vale Railway Co v The Amalgamated Society of Railway Servants, The [1901] AC 426 (refd)

Legislation referred to

National Land Code 1965 s 323

Trade Union Act 1871 [UK] s 8

Trade Unions Act 1959 s 47

Appeal from: Originating Summons No 24–531 of 1995 (High Court, Seremban)

R Sivarasa (*R Kengadharan* and *WY Tan* with him) (*Daim & Gamany*) for the appellant.

DP Naban (*Wong Kian Kheong* with him) (*Lee Yang & Boo*) for the first respondent.

Gurdit Singh (*R Shan & Associates*) for the second respondent.

Mary Lim (State Legal Adviser, Negeri Sembilan) for the third respondent.

Mokhtar Sidin JCA (delivering judgment of the court): The appellant in this appeal was the second respondent in the court below, while the first respondent was the applicant in the court below. The second and third respondents were the first and third respondents respectively in the court below. It is clear to us that the second and third respondents are not really interested in the outcome of this appeal except to abide by any decision of this court. It was for this reason that the legal adviser, Pn Mary Lim, was not present at the hearing as her presence had been excused at an earlier hearing on 4 March 1997. Mr Sivarasa mentioned on her behalf.

We have given our decision earlier whereby we have dismissed the appellant's appeal with costs. We now give our reasons for doing so.

The first respondent took out an originating summons against the appellant, the second and third respondents to remove a private caveat No 1895–95 Jilid 192 Folio 17 dated 13 October 1995 entered on a piece of land, Grant No 2410 Lot 312, Mukim Si Rusa, Port Dickson ('the said land'). This caveat was entered by the appellant. By the originating summons, the first respondent prayed that the third respondent cancelled and removed the private caveat and the said land be registered in the name of the first respondent. The first respondent also prayed that the appellant or his servants/agents be prohibited from entering anymore caveats in respect of the said land and that the third respondent be directed not to register anymore caveats by the appellant or his servants/agents. The learned judge in the court below allowed the application by the first respondent and ordered the caveat be removed.

In the affidavit in support of its originating summons, the first respondent stated that by a sale and purchase agreement dated 27 September 1995 ('the agreement'), the first respondent bought the said land from the second respondent ('the union') at the price of RM950,000. The first respondent paid RM95,000 at the time when the agreement was executed and the balance of RM855,000 was paid on 30 October 1995 to Messrs R Shan & Associates, solicitors for the union. On 16 November 1995, the solicitors for the union forwarded the said sum of RM950,000 to Allied Bank (M) Bhd to secure the release of the charge on the said land. In accordance with cl 11.1 of the agreement, the interest on the said land was to be transferred to the first respondent. Form 14A of the National Land Code 1965 had been duly executed by the trustees of the union. All documents in respect of this transaction had been forwarded to the Collector of Stamp Duty and the assessment in respect of stamp duty was RM44,970. On 13 October 1995, the day when the Collector made the assessment, the appellant entered the caveat to stop the transfer of the said land from the union to the first respondent. The caveat was entered on the ground that the sale of the said land was not approved by the executive council of the union and the sale price was below the market value. The first respondent wrote to the Collector to defer payment until 13 January 1996 or seven days after the removal of the private caveat (which is the subject matter of this appeal), whichever is the later.

A The first respondent then took out this originating summons to remove the caveat on the ground that the reasons given by the appellant to enter the caveat were not valid. It was contended by the first respondent that from the extract of the minutes of the meeting of the executive council of the union held on 10 September 1995, it is clear that the council had unanimously decided and approved the sale of the said land to the first B respondent at the price of RM950,000. The hon secretary general of the union had signed the statutory declaration to sell the said land to the first respondent. The trustees had also signed the agreement. This evidence was confirmed by one S Thamotharam, the hon secretary general of the union. He went on to state that at an executive council's meeting which C took place on 10 September 1992, all the members present at that meeting including the appellant had unanimously voted to sell the said land. Based on that resolution, the said land was sold to the first respondent. The sale and purchase agreement was also approved by the executive council at a meeting held on 3 November 1995. As such, the sale and the transfer to the first respondent were all valid. Mr S Thamotharam also confirmed that D the sum of RM950,000 had already been paid to Allied Bank in order to reduce the borrowings by the union.

The first respondent also raised the issue that the appellant has no locus standi to enter the said caveat. Mr S Thamotharam in his affidavit stated that the appellant was employed by Kulai Oil Mill in May 1995 but E was dismissed on 7 August 1995. At the material time, the appellant was not in employment in any estate so as to enable him to be eligible to be a member of the union. The affidavit further stated that the appellant had committed several breaches and he was given a show cause letter dated 28 September 1995 and was asked to attend an inquiry on 12 October 1995 but failed to do so. By a letter dated 27 October 1995, the appellant was F suspended from all his posts in the union.

In his affidavit in reply, the appellant stated that he has been a member of the union since 1962. He was elected as chairman of Johor state branch in 1993. The appellant admitted that by a letter dated 30 March 1995, he was stripped of his membership because he ceased to be employed in the G plantation industry. The appellant stated that he took up a court action to challenge his dismissal as a member of the union. The High Court allowed his application and made an order declaring that his dismissal as a member of the union was unlawful and that he be reinstated as chairman of the Johor state branch. On 5 July 1995, the appellant's solicitors filed an H application to clarify the order made by the court. On 28 August 1995, the High Court made an order and named the persons who were in the executive council of the union as on that date, of which the appellant was one. This is in respect of the first dismissal as a member. It is to be noted that subsequently on 27 October 1995, the appellant was again suspended for failing to reply to a show cause letter and to appear before an inquiry. I The appellant stated that the meeting of the executive council which took place on 3 April 1995 was invalid. The appellant asserted that it was at

that meeting that the decision to sell the said land was taken and as such that decision is invalid. To strengthen his argument, he affirmed that pursuant to the order of the High Court dated 28 August 1995, the Hon Secretary General of the union, CPS Thamotharam called a meeting of the executive council on 23 June 1995. The appellant admitted having attended the meeting. He alleged that the meeting was null and void because it contravened the order of the court dated 16 June 1995 and 28 August 1995 whereby some members who were not listed as members of the council were invited to attend the said meeting. Because of that contravention, he and his group refused to sign the attendance book and to take part at the said meeting. The appellant stated further that he and six others were not allowed to leave the meeting room. They were threatened and forced to sign a document to call a meeting of the delegates whereupon Mr Thamotharam called an extraordinary general meeting of the union's delegations which was held on 9 July 1995. The appellant stated that he and the other six members of the union did not attend the extraordinary general meeting because they took the view that the meeting was convened illegally. He went on to say that 40 other delegates protested against the holding of this meeting. The appellant himself wrote a protest letter dated 7 July 1995. The appellant alleged that as a result of that, he was given the show cause letter by the secretary general of the union. He did not reply to the said letter nor did he attend any inquiry. Pursuant to that, Mr Thamotharam issued a letter dated 27 October 1995 whereby the appellant was suspended. The solicitors for the appellant sent a letter to the secretary general demanding that the appellant be reinstated. The appellant was not reinstated but stripped of his post in the supreme council. It was contended by the appellant that his suspension was invalid in view of the court's decision on 16 June 1995 and 28 June 1995. It is to be noted that the meeting where the decision was taken to sell the land took place only on 3 November 1995. This was after the appellant was reinstated by the court but was suspended again on 27 October 1995.

The appellant stated further that from the minutes of a meeting dated 10 September 1992, it was decided that the land should not be sold. By the minutes of a meeting dated 12 June 1993, it was decided the union developed the land itself. It is clear to us that at the meeting dated 10 September 1992, the appellant was not in the executive council and was doubtful whether he was a council member at the meeting dated 12 June 1993 because from his own evidence, he became a council member by virtue of being chairman of the state branch of Johor only in 1993.

As to the value of the said land, the appellant alleged that the valuation of the said land which was done on 21 May 1993 and updated on 7 December 1994 was very low. For those reasons, he entered the private caveat on 11 October 1995. It is to be noted that when he alleged that the value of the land was low, he did not have any valuation report. Only on 15 January 1996 he got Syarikat Colliers Jordan Lee & Jaafar to value the land and who gave the value of the land as RM1,990,000. The appellant requested the matter to be referred to an arbitrator.

A The appellant admitted that he was dismissed by Kulai Oil Mill on 7 August 1995 but he has referred the matter to the Industrial Relations Department. Several meetings were held but no decision has been made yet. He asserted that he was still a member of the union pending the outcome of his dispute with his employer.

B One Mr Gregory Alphense Gomez, a trustee of the union, filed an affidavit in support of the appellant. At the hearing, we were informed by the counsel that Mr Gomez had withdrawn the affidavit and the affidavit is therefore expunged from the record.

The learned trial judge who heard the originating summons allowed the first respondent's application and ordered the caveat to be removed.
C Being dissatisfied with the decision, the appellant now appealed to us.

When this appeal came up before us, in addition, there were three motions being filed, namely motions in encls 13a, 22a and 24a. Motions in encls 22a and 24a were allowed when no objection was raised against them. We are only concerned above with the motion in encl 13a. As we
D have stated above, the third respondent is not really an interested party in this appeal.

The motion in encl 13a was filed by the first respondent for an order that the first respondent be allowed to adduce further evidence by way of an affidavit by one Mr Boo It Seong. The appellant objected to this.

E When asked as to the necessity of this evidence, Mr Naban, learned counsel for the first respondent submitted that the affidavit has a bearing in this appeal since it is raising a preliminary issue on the 'locus standi' of the appellant which will determine the appeal as a whole. It is clear to us that the question of locus standi is a point of law which could be raised at
F any stage of the proceedings even without the motion. With that, Mr Naban proceeded to address the court in respect of the locus standi of the appellant in respect of this appeal.

In his submission, Mr Naban said that in the first place, the appellant has no locus standi to enter the caveat because the said land under the rules and constitution of the union is vested with the trustees of the union.
G The appellant, though being a member of the union, has no interest on the said land. It is submitted that a member of a trade union is just like a shareholder in an incorporated company. If a union had committed any wrong, remedies are available to the members to take up against the union itself or the executive council. To enter a caveat by a member is not one
H of them and as such, the appellant has no locus standi in the present appeal. As a treasurer of the union, the appellant has the same right as a member except with some additional duties as provided for by the rules and constitution of the union. Entering a caveat is not one of them. Mr Sivarasa, counsel for the appellant in his reply submitted that s 47 of the Trade Unions Act 1959 gives the member the right to caveat the land
I and that right is for the benefit of the union and its members. In the present appeal, the appellant, being a treasurer and an exco of the union, certainly has the right to protect the interest of the union.

Section 323 of the National Land Code 1965 identifies the people who can enter private caveats. The relevant provision is s 323(1) and (2) which reads as follows:

> Applications for entry of private caveats
>
> (1) The persons and bodies at whose instance a private caveat may be entered are —
>
> (a) any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest;
>
> (b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interest; and
>
> (c) the guardian or next friend of any minor claiming to be entitled as mentioned in paragraph (b).
>
> (2) Any such person or body wishing to apply for the entry of such a caveat shall do so in Form 19B and such application shall be attested in accordance with the provisions of section 211 and shall state therein the nature of the claim on which his application is based, and whether the caveat is to be expressed to bind the land itself or a particular interest only.

It is in this light that we now proceed to consider whether the appellant has such right. It is clear the said land before the sale was vested in the names of the trustees of the union which is in accordance with the rules and constitution of the union. Rules 17(i) and (ii) read as follows:

> Rule 17 Trustees
>
> (i) There shall be three (3) trustees, who shall be elected by a Delegates Conference by show of hands and who shall hold office during the pleasure of the Union. They must be over twenty-one (21) years of age. Vacancies may be filled by the Executive Council until the next Triennial or Extraordinary Delegates Conference.
>
> (ii) *All real and personal property of the Union shall be vested in the joint names of the Trustees and dealt with by them as the Executive Council shall direct.* (Emphasis added.)

Rule 17(ii) makes it clear that any property of the union whether real or personal must be vested with the trustees. It appears to us that the interest of any property of the union is with the trustees and it is for them to protect, subject to the directions of the executive council.

The issue before us is whether the appellant, being an ordinary member or/and treasurer, as a member of the executive council has any interest on the said land which empowers him to enter the caveat. Mr Sivarasa submitted that s 47 of the Trade Unions Act 1959 gives him the right. Section 47 provides:

> All property vested in trustees
>
> All property, movable or immovable, of a registered trade union shall be vested in the trustees or the use and benefit of the union and its members and shall be under the control of the trustees.

A It appears to us that r 17 is similar to s 47 of the Trade Unions Act 1959. In our view, r 17 was enacted in the rules and constitution of the union because of s 47 of the Trade Unions Act 1959. In his submission, Mr Sivarasa contended that since the property of a union is for the benefit of the union and its members, the union and its members would be the beneficial owners and this interest falls under s 323(1)(b) of the National B Land Code 1965. That gave the appellant the right to enter the caveat. With the greatest respect to him, our reading of s 47 of the Trade Unions Act 1959 does not give any right to the union and its members. It is clear to us that s 47 vested the rights and the interest of a property to the trustees and the trustees will hold it for the use and benefit of the union C and its members. Being a treasurer and a member will not help the appellant. If anything is to be done, it is for the executive council or the union itself to direct the trustees what to do. Rule 6 of the rules and constitution of the union laid out the rights and duties of a member of the union. Rule 9 laid out the rights and duties and powers of the executive council. In our opinion, the relevant provisions in respect of properties and D funds of the union are contained in sub-rr (ix) and (xiii) of r 9 which are as follows:

> (ix) The executive council shall protect the funds of the union against extravagance and misappropriation. It shall through the hon general secretary or any other officer appointed by the executive council E prosecute any officer or member for misappropriation or for withholding any money or property belonging to the union.
>
> (xiii) The executive council shall give instructions to the trustees regarding the investment of the funds of the union.

It is clear to us that these provisions do not give the executive council any F right on any real property. In our view, to protect the funds of the union in sub-r (ix) means the executive council can prosecute any member or officer (including the trustees) for withholding or misappropriating any funds belonging to the union. Subrule (xiii) gives the executive council the right to give any direction to the trustees regarding the investment of the funds of the union which in our view includes real property. This makes it G clear that the rights and interests in any real property are vested with the trustees who must deal with them on the direction of the executive council. The remedy available to the executive council against trustees who acted in contravention of its direction is against the trustees themselves but not against the property itself which remains the domain of the trustees until H its disposal.

The duties and rights of a treasurer of the union is provided for by r 16(iv) of the rules and constitution of the union which are as follows:

> Rule 16 Duties of principal officers
>
> (iv) The hon general treasurer shall be responsible for all monies received I and paid to him on behalf of the union and for the proper keeping and posting of books of accounts as required under the Trade Unions Regulations 1959. He shall issue an official receipt for each and every

> sum of money received by him. He shall be responsible for the safe custody of all books or accounts and subsidiary documents at the head office. He shall prepare a statement of accounts for each business meeting of the executive council and for the triennial delegates conference. He shall in conjunction with the president and the hon general secretary, sign all cheques on behalf of the union. He shall give to the union or the executive council on request a just and true account of all monies received or paid by him. He shall have the right to vote.

We could not find under this subrule that any real property being vested with the treasurer or that the treasurer is given the responsibility of protecting the interest of any real property of the union. Thus far, we could not find anything under the Trade Unions Act 1959 or the rules and constitution of the union which confers the rights or interests to any real property to the members, executive council or the treasurer of the union. Throughout, the rights and interests are vested with the trustees.

The appellant's counsel referred to the case of *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770. That case is easily distinguishable from the present appeal. In that case, the caveator is a director of a limited company. As can be seen in a limited company, the property is vested with the company itself where the board of directors is the sole body managing that property. In the case of a union, the property is vested with the board of trustees and not with the executive council. The appellant also referred to the case of *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors* [1998] 1 MLJ 465. This case does not help the appellant when we noted what Edgar Joseph Jr FCJ said at p 510:

> It would appear that the question whether a managing director has a caveatable interest to caveat company land would depend on whether he was acting on behalf of the company or in his personal capacity.

As seen in the judgment, we have to examine the application for the caveat to be entered to see whether the caveat was in his personal capacity or on behalf of the company. We must examine from the evidence whether the appellant was acting on his own or on behalf of the union.

It appears to us that there are no cases in Malaysia directly in point in respect of caveats involving trade unions. It appears that there are several authorities involving real properties in England as pointed out by counsel for the first respondent. The appellant referred to 37 *Halsbury's Statutes of England* (3rd Ed). At p 994, it appears that s 8 of the Trade Union Act 1871 of England is similar to s 47 of the Trade Unions Act 1959. Section 8 provides:

> Property of the trade unions vested in trustees
>
> All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided by this Act, for the use and benefit of such trade union and the members thereof, ...

The note in respect of this is found at p 995:

A Benefit of such trade union and the members thereof. The property so held is, however, the property of the union; the union is the beneficial owner; per Lord Lindley in *Taff Vale Railway Co v Amalgamated Society of Railway Servants* [1901] AC 426 at p 444. A registered trade union is thus a statutory legal entity, anomalous in that, although consisting of a fluctuating body of individuals and not being incorporated, it can own property and let B by agents; per Farwell LJ in *Osborne v Amalgamated Society of Railway Servants* [1909] 1 Ch 163 at p 191. Accordingly, notwithstanding the words 'and the members thereof', *the beneficial owner of the funds is the union and not the individual members of the union*; ... . (Emphasis added.)

In the case of *The Taff Vale Railway Co v The Amalgamated Society of* C *Railway Servants* [1901] AC 426, Farwell J at pp 430–431 said:

Now the legislature in giving a trade union the capacity to own property and the capacity to act by agents has, without incorporating it, given it two of the essential qualities of a corporation — essential, I mean, in respect of liabilities for tort, for a corporation can only act by its agents, and can only be made to pay by means of its property. The principle on which corporations D have been held liable in respect of wrongs committed by its servants or agents in the course of their service and for the benefit of the employer — qui sentit commodum sentire debet et onus — (see *Mersey Docks Trustees v Gibbs* (1866) LR 1 HL 93 is as applicable to the case of a trade union as to that of a corporation. If the contention of the defendant society were well founded, the legislature has authorized the creation of numerous bodies of E men capable of owning great wealth and of acting by agents with absolutely no responsibility for the wrongs that they may do to other persons by the use of that wealth and the employment of those agents. They would be at liberty (I do not at all suggest that the defendant society would so act) to disseminate libels broadcast, or to hire men to reproduce the rattening methods that disgraced Sheffield 30 or 40 years ago, and their victims would have nothing F to look to for damages but the pockets of the individuals, usually men of small means, who acted as their agents. That this is a consideration that may fairly be taken into account appears from the opinion of the judges given to the House of Lords in the *Mersey Docks* case: 'We cannot think that it was the intention of the legislature to deprive a shipowner who pays dues to a wealthy trading company, such as the St Catherine's Dock Co for G instance, of all recourse against it, and to substitute the personal liability of a harbour-master, no doubt a respectable person in his way, but whose whole means, generally speaking, would not be equal to more than a very small percentage of the damages, when there are any.' The proper rule of construction of statutes such as these is that in the absence of express contrary intention the legislature intends that the creature of the statute H shall have the same duties, and that its funds shall be subject to the same liabilities as the general law would impose on a private individual doing the same thing. It would require very clear and express words of enactment to induce me to hold that the legislature had in fact legalized the existence of such irresponsible bodies with such wide capacity for evil. Not only is there nothing in the Acts to lead me to such a conclusion, but ss 15 and 16 of the I Act of 1871 imposing penalties on the trade union, and ss 8 and 15 of the Act of 1876 point to a contrary intention; nor do I see any reason for saying that the society cannot be sued in tort in their registered name. Sections 8 and 9 of the Act of 1871 expressly provide for actions in respect

> of property being brought by and against the trustees, and this express intention impliedly excludes such trustees from being sued in tort.

In the House of Lords, Lord Macnaghten at pp 439–440 said:

> It is quite true that a registered trade union is not a corporation, but it has a registered name and a registered office. The registered name is nothing more than a collective name for all the members. The registered office is the place where it carries on business.

Further down at p 444, Lord Lindley said:

> The Act does not in express terms say what use is to be made of the name under which the trade union is registered and by which it is known. But a trade union which is registered under the Act must have a name: see ss 14, 16, and Sch I; it may acquire property, but, not being incorporated, recourse is had to the old well-known machinery of trustees for acquiring and holding such property, and for suing and being sued in respect of it (ss 7, 8, 9). The property so held is, however, the property of the union: the union is the beneficial owner. Section 12 provides summary remedies for misapplications of the trade union's property, but there is nothing there to oust the jurisdiction of the superior courts, and, there being nothing in the Act to prevent it, I cannot conceive why an action in the name of the trade union against its trustees to restrain a breach of trust or to make them account for a breach of trust already committed should be held unmaintainable or wrong in point of form.

From the above, it is clear to us that under the Trade Unions Act 1959 under which the appellant is claiming to have an interest on the said land, it is clear that the said land is vested with the trustees and only the trustees can deal with them. In our view, only the trustees have interest on the said land. The union and its members' entitlement is only to the use and benefit of the said land. That being the case, the union and its members have no caveatable interest on the said land. As such, the appellant has no interest on the said land whether as an ordinary member, treasurer or being a member of the executive council.

It was contended by the first respondent that being an ordinary member and the executive council of a union is somewhat similar to being a shareholder and a director of a company. To a certain extent, subject to the distinctions, we agree. A shareholder and a director of a company has no registrable interest under s 323 of the National Land Code 1965. This was pointed out by Siti Norma Yaakob J (as she was then) in the case of *Citibank NA v Kwok Chee Loong* [1988] 2 CLJ 758 where at the same page she said:

> Thus the only issue is whether the respondent, being only a director and shareholder, has any registrable interest over the land under s 323 of the National Land Code. I answer this in the negative; for as a shareholder, he is only entitled to receive dividends and to vote at meetings convened by Tajob. As an ordinary director however, he is entitled to attend all board meetings, participate in the discussions that follow and decide on policies and business ventures that Tajob should embark.

A The right of a shareholder and a director to a caveat under s 323 of the National Land Code 1965 has been discussed in the case of *Hew Sook Ying v Hiw Tin Hee* [1992] 2 MLJ 189 by Mohd Azmi SCJ (as he was then) when at pp 195–196 he said:

> The problem in this case is to identify the caveator's claim to title or
> B registrable interest in the land under s 323(1) of the NLC. What is his caveatable claim? Although Mr Murthi, counsel for the respondent, has submitted at length both here and in the court below that the respondent as managing director entered the caveat as a trustee for the company, he has also submitted that the caveator so acted as a managing director on the instruction of the board of directors as deposed in paras 8 and 11 of his
> C affidavit sworn on 18 April 1989 which reads:
>
> '8 In the premises the plaintiff was a party to the fraud to cheat the shareholders of the company.
>
> 11 I as the managing director of the company have been authorized by the board to lodge the caveat to protect the interest of the company.'
>
> D On this issue there appears to be material contradiction between the caveator's affidavit and his previous statements made in Form 19B of the NLC, not only on his capacity in entering the caveat but also the ground for which it is entered. The absence of the board's resolution before the court makes the task of resolving the contradiction even more difficult particularly when the caveat is not expressly entered in the name of the company. The
> E contemporaneous document in Form 19B does not support the respondents assertion in his affidavit that the caveat is lodged by him as a managing director to protect the interest of the company, but is expressly for the purpose of protecting his own personal interest, possibly as a shareholder. The address given in the document, viz 'No 147 Kampong Jaya Semenyeh' is not the address of the company and nor did he sign the document in his capacity as managing director. To add to the confusion is the argument in
> F oral submission referred to earlier that as a managing director, he entered the caveat as a trustee for the company and thereby bringing his case under s 323 (1)(b) as a person claiming to be beneficially entitled under a trust affecting the disputed land.
>
> From Form 19B (see exh HSY–11 at p 38 of appeal record), it is clear
> G that the caveat is entered by the respondent under s 323 for the express purpose of protecting his personal interest. This is obvious from the attestation clause in the application for entry of the caveat which constitutes the ground of the application. It states:
>
> 'Saya adalah salah seorang pengarah di syarikat perumahan Hew Hee Bros Holdings Sdn Bhd, pemilik berdaftar ke atas tanah-tanah GM
> H 396, 397, 400, 401, 402, 441 dan 451 Mukim Semenyih.
>
> Sebagai melindungi *kepentingan saya* ke atas tanah-tanah berkenaan, maka saya memohon satu kaveat dimasukkan sebagai mengikat tanah/ kepentingan tersebut.' (Emphasis added.)
>
> In his written judgment the learned judge is of the opinion that the respondent as a managing director has the right to enter the caveat for the company.
> I But the learned judge apparently failed to go one step further and decide on the documentary evidence whether he did so for the company or for his own interest either as an officer of the company or as a shareholder. If the

> learned judge had critically considered the attestation clause in Form 19B, he would have found that the entry of the caveat is expressly for the purpose of protecting the respondent's own interest. Indeed, as stated earlier the caveat itself is entered in his personal name. We agree with Mr Low Hop Bing for the appellant that the learned judge has erred in law and in fact in failing to distinguish the legal entity between the company and its officers and shareholders. In entering the caveat in his own name for the purpose of protecting his own personal interest, it can only mean that he has done so as a shareholder or on behalf of all shareholders of the company.

Further down at p 198, his Lordship said:

> It is a well-established principle of law that a limited company incorporated under the Companies Act 1965 and the individuals forming the company are distinct legal entities, however completely in control it might be by one or more individuals of the company (see *Salomon v Salomon & Co Ltd* [1897] AC 22). (See also *Tunstall v Steigmann* [1962] 2 All ER 417.) Any departure from a strict adherence of the principle has only been made to deal with special circumstances where a limited company right well be a facade concealing the real facts behind the corporate veil.
>
> In this appeal, we must not lose sight of the fact that the company is the registered proprietor of the land under caveat, and it is the company that sold the property to the appellant at a price of RM35,000. The company has in fact handed to the appellant not only the instrument of transfer but also the document of title for necessary registration. In such circumstances, it is impossible to envisage how the managing director either personally or as a shareholder or as an officer of the company, can be said to have a caveatable claim to title or registrable interest under s 323(1) merely because of internal squabbles between him and certain directors of the company.

Thus, in the case of a company, an immovable property is vested with the company. The board of directors has a registrable interest on that land and only the board has the right to protect the interest of the company. This could be done by way of resolution or decision taken at the board meeting. No individual director or shareholder on his own has any registrable or beneficial interest in any property of the company. As such, there is no right accrued to a director or a shareholder to enter a private caveat to protect his own interest. He could only do so if it is done on behalf of the company or to protect the interest of the company that is when he is given the mandate by the board of directors or by resolution of shareholders. Again we must also look at the instrument creating the caveat. If it is stated in the instrument that it is for the purpose of protecting his own interest, then it is obvious from the authorities that the caveat cannot be upheld.

The similarities between a company and a union is that a shareholder is similar to a member and the board of directors is similar to the executive council of a union. In the case of the executive council, it has no vested interest in any property.

In the present appeal, it is clear to us that the appellant as an ordinary member or a member of the executive council of the union was never given the mandate to enter the caveat. We are of the opinion that he has no interest whatsoever on the said property and as such, he has no locus standi to enter that caveat. Further, we have examined Borang 19B (at

p 117 of the record) and found that when he made the application he was acting in his personal capacity. That being the case, the first respondent was right in raising the objection as to the locus standi of the appellant. For the reasons stated above, the appellant's appeal should be dismissed with costs.

Anyway, there is one other point raised by the appellant which is not connected to the locus standi issue, but which we feel it is pertinent for us to decide. This was in respect of the contention of the appellant that the executive council of the union has no authority to sell the property because the meeting of the executive council that passed the resolution was illegally held. The answer to this has been stated by Mohd Azmi SCJ in the case of *Hew Sook Ying v Hiw Tin Hee* at pp 198–199 where he said:

> In conclusion, it is our opinion that the respondent has no caveatable claim to title or registrable interest under s 323(1)(a) or (b) to the NLC. Further, once the company has executed the instrument of transfer in Form 14A in favour of the purchaser, and handed over the original document of title, the managing director either as an officer of the company or in his personal capacity as a shareholder has no fiduciary duty to challenge the conduct of the company by means of a private caveat for the alleged purpose of protecting his own interest or the interest of other shareholders. In the present circumstances, it is unreasonable for the managing director to challenge the bona fide of the sale without first resolving the matter either in the boardroom of the company, or at the floor or its general meeting. In any event, under s 114(f) of the Evidence Act 1950, the court is entitled to presume that the common course of business in the company has been followed in this particular transaction. Further, the principle laid down in *Royal British Bank v Turquand* (1856) 6 E & B 327 is that a person dealing with a company does not need to enquire into the regularity in the internal affairs and proceedings of the company, and may assume that all is being done regularly. Section 20 of our Companies Act 1965 also provides that no conveyance or transfer of property, whether real or personal, to or by a company shall be invalid by reason only of the fact that the company was without capacity or power to do the act or to execute or take the conveyance as transfer. It is not true that the respondent would be without any remedy once the caveat is removed. Notwithstanding the principle of indefeasibility of title, there is nothing to stop the respondent from suing the appellant and the relevant directors for the alleged fraud and if necessary to challenge and caveat the title of the appellant by virtue of s 340(2) of the NLC even after the instrument of transfer has been registered.

In the case of *Pekan Nenas Industries Sdn Bhd v Chang Ching Chuen & Ors* [1998] 1 MLJ 465 which is a decision of the Federal Court consisting of five judges, Edgar Joseph Jr FCJ (delivering the judgment of the court) at p 512 said:

> In our view, at best, the first caveat raised a doubt regarding a possible abuse of power, and in such a situation, as we have said, the duty cast upon the intervener/purchaser was not to ascertain whether the transaction was in fact regular but merely to neutralize the circumstances of suspicion. In other words, the duty on the outsider in such a situation was not to investigate as to whether the mother and the eldest son had authority to act on behalf of the family company. Accordingly, when as here, Dato Tan who

reasonably thought that he was dealing with the family company was told by the mother, who was the secretary of the company, that she had custody of the title deeds, this would suffice to negative or neutralize the circumstances of suspicion aroused by the first caveat (*AL Underwood Ltd v Bank of Liverpool* [1924] 1 KB 775). We might as well add that it was but natural that outsiders dealing with a company would expect a secretary of the company to be the custodian of title deeds belonging to that company.

Further down at p 513 his Lordship said:

If the board resolutions were impugned by reason of they having been passed at an illegally convened meeting, no proper notice thereof having been given to each director, or because there was no quorum present, this should not operate to the prejudice of the outsider who would still be entitled to rely on the rule in *Turquand*'s case, unless he knew or ought to have known of such defect. A quorum case worth citing to illustrate this point is *Montreal and St Lawrence Light and Power Co v Robert* [1906] AC 196, per Lord Macnaghten at pp 202–203:

> 'Another point was made on behalf of the company. It seems to have been a mere afterthought, for there is no hint of it before the action was launched. It is said that the meeting of 17 July was irregular: there was not a quorum present; therefore the resolution passed on that occasion was invalid and good for nothing. It is quite true that the by-laws require the presence of three directors to make a quorum — and only two attended on 17. But, after all, the by-laws of a company constituted as the Montreal and St Lawrence Light and Power Co was constituted are not public property. They concern matters of internal management. Those who deal with the company have no means of access to them, no right to pry into the company's archives or interrogate its officials. There was nothing to put Robert on inquiry. The officials of the company, the president, the secretary, and the notary furnished him with a copy of a resolution which purported to be a resolution of the directors duly and regularly passed. On the faith of that representation, Robert altered his position and parted with his property. The company cannot now be heard to say to the vendor: 'You should not have given credit to what our people told you'. If such a plea were listened to, no one would be safe in dealing with a company having private regulations of its own inaccessible to the outside world to which appeal could be made in case of need, to relieve it from solemn obligations or save it from a bad bargain.'

We note, in passing, without placing undue stress on it, that the Court of Appeal had held that the family company's board meeting of 17 April 1990 was bad in law for non-notice to the father but overlooked the fact that the father had left the family home in Singapore, without leaving a forwarding address.

But much more importantly, as we have already said, if a board meeting is irregular because proper notice of it was not given in advance to each director, an outsider in the position of Dato Tan for the intervener/purchaser here who would have no means of knowing of such an omission, would not be affected by the irregularity.

It is clear to us that the decision to sell the land was decided by the executive council. It may, as alleged by the appellant, be improperly constituted but to an outsider that was the decision of the executive

A council. The minutes of that meeting had not been expunged and neither was there any declaration that the meeting was illegal. As such, for all intents and purposes, the decision to sell the land stands. It is upon this decision that the trustees executed the sale and purchase agreement and Borang 14A. Further, we are of the view that once the trustees on whom the said land had been vested executed the sale and purchase agreement and Borang 14A, the transaction was formalized. It does not matter whether there was any decision by the executive council or not.

For the above reasons, we hold that the appellant has no locus standi to enter the caveat and the appeal should be dismissed with costs. The decision of the court below in ordering the caveat to be removed is confirmed. The deposit is to be paid towards the account of taxed costs.

Appeal dismissed.

Reported by David Lai